



Michigan Supreme Court

State Court Administrative Office
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Memorandum

DATE: August 9, 2007

TO: All Judges
cc: Court Administrators, Probate Registers, Magistrates, and County Clerks

FROM: Carl L. Gromek

RE: State Court Administrative Memorandum 2007-05
Amendment to Surety Bond Process
(amends Administrative Memorandum 2005-01)

The process of issuing, releasing, or forfeiting surety bonds is governed by various court rules and statutes. This memo outlines the elements of the process, and incorporates changes that have been made in court rules and court forms since Administrative Memorandum 2005-01 was released. Please adjust your procedures accordingly.

A. **Pretrial Release**

1. ***Procedure:***

- a. The court states reasons on the record that the defendant's appearance or protection of the public cannot be assured with a personal recognizance bond or by money bail with or without conditions.
- b. If the court finds that conditions outlined in MCL 765.6 or 765.6a cannot be met by the defendant, a 10% bond shall not be set.
- c. If the court fixes a bail amount according to MCL 765.6(1) and allows for the posting of a 10% deposit bond, the accused person may post bail by a surety bond in an amount equal to one-fourth of the full bail amount fixed under MCL 765.6(1) and executed by a surety approved by the court.

d. The defendant and surety sign SCAO-approved form MC-241, Bond.

2. **Note(s):**

- a. MCR 6.106(E)(1)(a) provides that the court may require a defendant to post a bond executed by a surety approved by the court, by the defendant, or by another who is not a licensed surety.
- b. MCL 765.6a provides that before granting bail, a court shall require a cash bond or surety other than the applicant if the applicant is (1) charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him or her, or (2) has been convicted of a felony twice within the preceding five years.

B. Conditions of Bond

1. **Procedure:**

- a. Notate all conditions of release on the bond prior to defendant, third party, or surety's signature on MC-241, Bond form.
- b. If a conditional bond is entered for the protection of named persons, the court forwards a copy of MC-241, Bond, to law enforcement for entry into LEIN.

2. **Notes:**

- a. MCR 6.106(D) provides that if the court determines that the release of a defendant on a personal recognizance bond will not reasonably ensure the appearance of the defendant or will not reasonably ensure the safety of the public, the court may order a conditional bond.
- b. MCR 6.106(I)(2)(b) clarifies that bail agents are liable only for the appearance of a defendant, and not for compliance with conditions imposed on a defendant by the court as part of a conditional release pursuant to MCR 6.106. If a defendant fails to comply with the bond conditions, a court may continue the revocation order and enter judgment against the defendant for failure to comply with the conditions of release or failure to satisfy the court that compliance with those conditions was impossible.
- c. *Kondzer v Wayne County Sheriff*, 219 Mich App 632 (1996), held that a surety is only bound by those terms and conditions to which they agree or consent for the release of a defendant. A violation of conditional bond may result in forfeiture or revocation of a surety bond; however,

this may only be imposed on a surety if they agreed or consented to the imposition of the protective condition. A surety's agreement or consent must be made by written instrument or placed on the record and must not be a requirement for the surety to post the bond.

- d. In *People v Brow*, 253 Mich 140 (1931), the court held that a surety's obligation to guarantee a defendant's presence in court terminates upon sentencing unless the surety consents to the bond being continued.

C. Termination of Release Order and Notice to Surety

1. *Procedure:*

- a. Upon finding that a defendant has failed to comply with conditions of release, the court may issue a warrant, SCAO-approved form MC-229, Petition and Bench Warrant.
- b. Upon issuing the bench warrant, the court should set a show cause date, prepare SCAO form MC-218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment, and sign and mail the form to the defendant, the surety agent, anyone who posted bond, and the prosecutor.

2. *Notes:*

- a. MCL 600.8511 does not confer the authority to sign an Order Revoking Release and Forfeiting Bond to a district court magistrate.
- b. MCR 6.106 (I)(2) provides that a defendant's failure to comply with conditional release may result in revocation of the release order and forfeiture of bond.
- c. There is a conflict between statute and court rule regarding the procedural requirements for service of the Motion and Order to Show Cause upon a surety. MCR 3.604(I)(2) provides that the notice must be given as prescribed in MCR 2.107 and may be mailed to the address stated in the bond or provided when the security was furnished, unless there has been a notice of change of address. MCL 765.28 provides that notice shall be served upon each surety in person or left at the surety's last known business address. When there is a conflict between statute and court rule and the subject of the conflict is procedural in nature, the court rule governs. Therefore, MCR 3.604(I)(2) governs the procedure for service upon sureties.

D. Opportunity to Appear, Entry of Judgment

1. *Procedure:*

- a. Hold the show cause hearing. If good cause is shown, the court may enter judgment against the surety or sureties not exceeding the full amount of the bond.
- b. If a surety has posted a bond in an amount equal to one-fourth of the full bail amount fixed under MCL 765.6(1), the surety is only liable for that amount. The defendant is liable for the remainder of the bail set by the court.
- c. Prepare, sign, and mail SCAO form MC-238, Judgment after Bond Forfeiture, to the defendant and surety agent.
- d. If the bond or bail is forfeited, the court shall enter an order directing the disposition of the cash, check, or security within 45 days of the order. Upon receipt of a certified copy of the order, the treasurer or clerk shall dispose of the cash, check, or security pursuant to the order.
- e. The prosecuting attorney, attorney general, or an attorney for the local municipality may proceed with civil collection procedures.

2. *Notes:*

- a. MCL 600.8511 does not confer the authority for a district court magistrate to hold a show cause hearing on a forfeiture procedure.
- b. MCR 3.604(I)(1) provides that in an action where a bond or other security has been posted, a court may enter a judgment directly against the surety or security on motion without the need of an independent action showing liability on the bond or forfeiture of the security.
- c. MCR 6.106(I)(2)(b) provides that if the defendant does not appear and surrender to the court within 28 days after revocation date, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bail or bond for an amount not to exceed the full amount of the bail, and costs of the court proceedings, or if a surety bond was posted, an amount not to exceed the full amount of the surety bond. If the amount of a forfeited surety bond is less than the full amount of the bail, the defendant shall continue to be liable to the court for the difference, unless otherwise ordered by the court.

- d. MCR 6.106(I)(2)(b) provides that if the defendant does not within that period satisfy the court that there was compliance with the conditions of release other than appearance or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant alone for an amount not to exceed the full amount of the bond, and costs of the court proceedings.
- e. MCL 765.15(1) sets forth the procedure for disposition of bond or bail upon forfeiture.
- f. MCL 765.28 allows up to the full amount of the bond to be forfeited and a judgment entered by the court.
- g. MCR 6.106(I)(2) states that if a prosecuting attorney, attorney general, or an attorney for the local municipality does not wish to be involved with any forfeiture action, the court still may schedule a show cause hearing, send notice to the prosecuting official, and proceed.

E. Remission of Penalty

1. *Procedure:*

- a. Defendant or attorney files a Motion for Reinstatement of Bond.
- b. The court schedules a hearing with proper notice to the prosecutor or an attorney for the local municipality.
- c. The motion may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty.
- d. If the person who forfeited bond or bail is apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person within one year from the time of the forfeiture judgment, the court shall set aside the forfeiture and discharge the bail or bond.
- e. If bond or bail is discharged, the court must enter an order with a statement of the amount to be returned to the depositor.

2. *Notes:*

- a. MCR 3.604(I)(3) provides that if the court determines, in later proceedings or upon appeal, that the surety is not liable or the security should not have been forfeited, the court may order restitution of the

money paid or security forfeited to the surety agent or person who posted bond.

- b. MCR 3.605(D) allows, with proper notice to the prosecutor or an attorney for the local municipality, an application for the remission of a penalty, including a bond forfeiture, to be made to the judge who imposed the penalty or ordered the forfeiture.
- c. MCL 600.4835 authorizes, upon good cause shown, the circuit court to remit any penalty, or any part thereof, upon just and equitable terms to the county treasurer (MCL 600.4841). Courts may not remit any fine imposed upon conviction, contempt of court, or for violating its orders or process..
- d. MCL 765.15 outlines the procedure to follow if bond or bail is forfeited, the defendant is apprehended within one year from the time of the forfeiture judgment, and the forfeiture order is set aside.

F. Deposit of Forfeited Bond

1. *Procedure:*

- a. If bond or bail is forfeited, an order must enter directing disposition of it within 45 days of the order. When presented with a certified copy of the order, the treasurer or clerk must dispose of the bond or bail pursuant to the terms of the order.
- b. If the court does not order an assignment of the bond, it must order the breach prosecuted by the attorney general or the prosecuting attorney for the county in which the bond was taken under MCR 3.604. Any penalty recovered must be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

2. *Notes:*

- a. MCR 3.606 provides that the penalty of the bond for contempt outside the immediate presence of the court shall be credited to the general fund of the treasury of the county in which the bond was taken.
- b. MCL 765.15(1) sets forth the procedure to follow after a bond or bail is forfeited.
- c. MCL 780.905(4) states that any assessments imposed upon a defendant whose bond or bail has been forfeited shall be collected from any cash deposit personally given by the defendant.